IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MORAIMA KELLY IVORY :

Plaintiff, :

: CIVIL ACTION

v. :

: NO. 01-5708

RADIO ONE, INC. :

Defendant.

:

MEMORANDUM AND ORDER

YOHN, J. APRIL _____, 2002

Plaintiff, Moraima Kelly Ivory ("Ivory") filed this action against Radio One, Inc. ("Radio One") for discrimination on the basis of sex and pregnancy and for retaliation for opposing such discrimination in violation of both Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e, *et. seq.* and the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. §951, *et. seq.*

Presently before this court is a motion by Radio One to dismiss Ivory's claims of retaliation (Counts III and IV). Radio One maintains that because Ivory's administrative complaint did not include a charge of retaliation, Ivory did not exhaust her administrative remedies as is required before bringing suit in a judicial court. Therefore, Radio One contends that this court cannot exercise jurisdiction of Ivory's retaliation claims. Because I find that the factual basis for Ivory's retaliation claim is within the scope of her administrative complaint, I will deny Radio One's motion to dismiss.

BACKGROUND

Ivory was employed as a radio announcer for Radio One's morning show from early 1997 until she was terminated by the Radio One management in November 1997. Throughout the period of her employment, Ivory alleges that she was subject to an extremely hostile work environment. Ivory maintains that she was verbally abused and berated by her male co-hosts, and in particular, by Tony Richards ("Richards"). Ivory further alleges that she was not afforded the same respect and professional opportunities as her male counterparts. Although Ivory complained to the Radio One management on numerous occasions about this harassment and differential treatment, no action was taken to remedy the situation. On September 22, 1997, Ivory informed Radio One that she was pregnant. Less than two months later, on November 14, 1997, Ivory was terminated.

On January 28, 1998, Ivory filed a timely charge of sex and pregnancy discrimination against Radio One with the Pennsylvania Human Relations Commission ("PHRC"), asserting violations of the PHRA. This charge was cross-filed with the Equal Employment Opportunity Commission ("EEOC"), alleging violations of Title VII. On October 16, 2001, the EEOC issued Ivory a "right to sue" letter. Subsequently, on November 13, 2001, Ivory filed the instant action, alleging violations of both Title VII and the PHRA. There are four counts in Ivory's judicial complaint: Counts I and II allege discrimination on the basis of sex and pregnancy and Counts III and IV allege retaliation for opposing the discriminatory employment practices of Radio One. Although the discrimination claims were raised in Ivory's administrative charge, Ivory's retaliation claims are raised by her judicial complaint in the first instance. As such, Radio One contends that Counts III and IV must be dismissed for failure to exhaust by filing these claims

with the appropriate state and federal agencies prior to bringing suit in this court.

STANDARD

In ruling on a motion to dismiss, the court must construe the complaint in the light most favorable to the plaintiff and accept as true all well-pleaded allegations of fact. *Cowell v. Palmer Township*, 263 F.3d 286, 290 (3d Cir. 2001). The court must determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996) (citations omitted). A claim may be dismissed only when it is clear that there are no inferences that can be drawn from the complaint's factual allegations that would support a plaintiff's claim for relief. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

DISCUSSION

Before bringing a suit in a federal court alleging violations of Title VII and the PHRA, it is well-settled that a plaintiff must exhaust her administrative remedies by first filing a charge with the appropriate agency. However, "[o]nce a discrimination charge has been filed, the scope of a judicial complaint is not limited to the four corners of the administrative charge." *Duffy v. Massinari*, 202 F.R.D. 437, 441 (E.D. Pa. 2001). Rather, the parameters of the judicial action are

¹ The Equal Employment Opportunity Act provides that a person claiming discrimination in violation of Title VII must file a charge with the Equal Employment Opportunity Commission prior to bringing a suit in federal court. 42 U.S.C. § 2000e-5; *Ostapowicz v. Johnson Bronze Co.*, 541 F.2d 394, 398 (3d Cir. 1976). Similarly, the Pennsylvania Human Relations Act provides that a person claiming discrimination must file a verified complaint with the Pennsylvania Human Relations Commission before a discrimination suit based on employer action may be maintained in court. 43 P.S. § 959. The analysis of whether a plaintiff has failed to exhaust these administrative procedures is identical under Title VII and the PHRA. *Schouten v. CSX Trans.*, *Inc.*, 58 F.Supp.2d 614, 617 (E.D. Pa. 1999).

defined by the "EEOC investigation which can reasonably be expected to grow out of the charge of discrimination." *Ostapowicz*, 541 F.2d at 398-99. The appropriate test for whether a plaintiff has failed to exhaust administrative remedies is not whether the administrative complaint mirrors the plaintiff's earlier administrative complaint, but rather "whether the acts alleged in the subsequent . . . suit are fairly within the scope of the prior EEOC complaint." *Antol v. Perry*, 82 F.3d 1291, 1295 (3d Cir. 1986) (quoting *Waiters v. Parsons*, 729 F.2d 233 (3d Cir. 1984)).

There is no dispute that Ivory did not file an explicit claim of retaliation with the PHRC or the EEOC prior to bringing this judicial complaint. Ivory's administrative complaint only asserted sex and pregnancy discrimination. The administrative complaint does not directly allege that Radio One retaliated against Ivory for opposing this discrimination. In addition, on the PHRA administrative charge form, Ivory indicated that she was alleging a violation of the PHRA subsection prohibiting discrimination, but she did not mention the subsection prohibiting retaliation. However, as explained above, it is not necessary that Ivory's judicial complaint be identical to her earlier administrative charge to be within the purview of this court's jurisdiction. Ivory's retaliation claims will stand if the retaliatory acts alleged in this judicial suit are within the scope of her earlier administrative complaint or a reasonable investigation arising therefrom.

The legal analysis for whether a judicial complaint is within the scope of an earlier administrative charge or a reasonable investigation therefrom turns on whether "there is a close nexus between the facts supporting each claim or whether additional charges made in the judicial complaint may fairly be considered explanations of the original charge or growing out of it." *Fakete v. Aetna Incorp.*, 152 F.Supp.2d 722, 732 (E.D. Pa. 2001). In determining whether a judicial complaint is sufficiently related to an administrative charge, the most important

consideration is the factual statement. *Doe v. Kohn Nast & Graf, P.C.*, 866 F.Supp. 190, 196 (E.D. Pa. 1994). Here, the factual allegations that support Ivory's retaliation claim are nearly identical to the factual allegations contained in her administrative complaint. Ivory's retaliation claim in her complaint is based on her belief that Radio One terminated her employment because she complained about being subjected to sexual harassment on the job. Doc. 9, Ex. C, Judicial Complaint, ¶ 20, 38, 43, 65, 68. Ivory's administrative complaint avers that Ivory complained to management on numerous occasions about the discriminatory behavior of her co-host, Tony Richards, and the "abusive work environment" at Radio One. Doc. 9, Ex. A, PHRC Complaint ¶¶ 9,12,19.

In addition, the facts alleged in Ivory's administrative complaint are sufficient for this court to find that a retaliation claim is a natural outgrowth of Ivory's administrative charge. Ivory's administrative complaint clearly indicated that she had complained to Radio One management about the abusive work environment, and in particular, the discriminatory behavior of her co-host, Tony Richards. Id. The administrative complaint also averred that nothing was done to remedy the situation, and that she was fired because Richards did not want her on the radio show. Id. at ¶ 20. Viewing these facts in a light most favorable to Ivory, it is reasonable to infer that Richards did not want Ivory on the show because she had complained about his discriminatory behavior and that Radio One had fired Ivory rather than remedy the discrimination.

In *Mullen v. Topper's Salon and Healthcare Spa, Inc.*, 99 F.Supp.2d 553 (E.D. Pa. 2000), the court allowed a claim of retaliation to stand even though allegations of retaliation had not been brought in the plaintiff's EEOC charge. Because the EEOC charge contained allegations that the plaintiff had complained about the discrimination on numerous

occasions, the court found that the allegations stated in the EEOC charge were ample and specific enough to put the EEOC and defendant on notice of plaintiff's retaliation claim. *Mullen*, 99 F.Supp.2d at 556 & n.6.² Because a reasonable administrative investigation would certainly have included an inquiry as to whether Ivory's termination was in retaliation for her complaints about Richard's discriminatory behavior, I conclude that plaintiff has met the exhaustion requirement with regard to her retaliation claim.³

The cases that defendant suggests support its argument in favor of dismissing Ivory's retaliation claims are distinguishable from the present action. In *Watson v. Southeastern Pa*. *Trans. Auth.*, 1997 WL 560181 at *7 (E.D.Pa. Aug. 28, 1997), the plaintiff's retaliation claim was dismissed because retaliation was not alleged in the EEOC discrimination charge and the EEOC charge did not contain any allegations that the plaintiff had complained about the discrimination. Unlike *Watson*, Ivory's administrative complaint did include specific allegations

² Defendant maintains that because Ivory is an attorney and was represented by counsel at the time that she filed her administrative complaint, Ivory is entitled to less leniency than a lay person would be entitled to for failing to include a charge of retaliation in her administrative complaint. Defendant relies upon out-of-circuit caselaw to support this proposition and completely ignores the precedent of *Doe v. Kohn Nast & Graf*, 866 F.Supp. 190 (E.D. Pa. 1994). In *Doe*, a district court in this circuit found that the plaintiff's failure to indicate a claim on an EEOC charge form was not fatal to his ability to bring the claim in court and that this protection extended to lawyers and laymen alike. 866 F.Supp at 196 n.2. Thus, although it is true that a court should be careful about penalizing a lay person for failing to include all appropriate charges in an administrative complaint, it is not true that the administrative complaint filed by a plaintiff who is represented by counsel should be subjected to harsher judicial scrutiny.

³ In ruling on defendants' motion to dismiss, the parameters of Ivory's judicial complaint must be determined by whether a reasonable investigation stemming from Ivory's administrative charge would have revealed Ivory's claims of retaliation. The scope of the actual administrative investigation is irrelevant. *Hicks v. ABT Assocs., Inc.,* 572 F.2d 860, 966 (3d Cir. 1978). Thus, this court concludes that the scope of the investigation that could reasonably be expected to grow out of Ivory's original EEOC claim is broad enough to encompass Ivory's retaliation claim.

that she had complained about the hostile and sexually-charged work environment but that nothing was done to remedy the discrimination. Additionally, the cases cited by defendant in which the plaintiff's retaliation claim was dismissed because its factual basis was not contained in the administrative complaint are inapplicable to the present situation, as the basis of Ivory's retaliation claim is clearly set forth in her administrative charge. Fakete v. Aetna Incorp., 152 F.Supp.2d 722, 731 (E.D. Pa. 2001) (court dismissed a retaliation claim because it was premised on actions taken by the defendant in a hearing that was not described in the plaintiff's EEOC charge); Schouten v. CSX Trans., Inc., 58 F.Supp.2d 614, 617 (E.D.Pa 1999) (court rejected a retaliation claim because the plaintiff's EEOC charge contained "no allegations which could remotely be construed as claims of retaliatory conduct"). Furthermore, neither of the cases defendant cites in which a claim of retaliation was dismissed because the plaintiff's EEOC charge failed to contain any allegations of retaliatory conduct analyzed whether a reasonable investigation into the EEOC charge would have revealed a retaliation claim. In these cases, the court prematurely stopped its analysis without considering whether the exhaustion requirement was met, not because of an explicit retaliation charge, but because facts alleged in the lawsuit should have reasonably brought about an investigation into a possible retaliation claim. See Rogan v. Giant Eagle, Inc., 113 F.Supp.2d 777, 785-788 (W.D. Pa. 2000); Sosa v. Floyd, 1999 WL 240070 (E.D. Pa. April 23, 1999).

CONCLUSION

Throughout her employment with Radio One, Ivory complained to management on numerous occasions about the abusive manner in which she was treated by her radio co-hosts.

When Ivory was terminated, she was told it was because Richards, the man about whom she had mostly complained, did not want her on the radio show. These allegations are contained in both Ivory's administrative and judicial complaints. Because of the significant overlap in factual bases between Ivory's administrative and judicial complaints, this court is satisfied that a reasonable investigation of Ivory's discrimination charge should have put the EEOC, PHRC and Radio One on notice of the retaliation claim that Ivory now brings in her judicial complaint. As such, Ivory's retaliation claims are within the scope of her administrative charge and are not barred for a failure to exhaust. Accordingly, I will deny Radio One's motion to dismiss Counts III and IV of Ivory's complaint.

An appropriate order follows.

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Plaintiff,	:
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v.	:
DADION ONE BIG	: NO. 01-5708
RADION ONE, INC.	:
Defendant.	:
	:
<u>OR</u>	<u>RDER</u>
And now, this day of Febr	ruary, 2002, upon consideration of defendant's
motion to dismiss Counts III and IV of plaintiff	's complaint (Doc. 5); plaintiff's response (Doc
9); and defendant's reply thereto (Doc. 11); it is	hereby ORDERED that defendant's motion to
dismiss is DENIED.	
	William H. Yohn, Jr., Judg